

Editor's note: Reconsideration denied by order dated July 1, 1987

DON CHRIS A. COYNE

IBLA 80-615

Decided JANuary 5, 1981

Appeal from decision of Alaska State Office, Bureau of Land Management, deeming mining claims abandoned, and declaring recordation of the claims under FLPMA void. AA 13361 through AA 13373.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

APPEARANCES: Don Chris A. Coyne, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Don Chris A. Coyne appeals from the decision of the Alaska State Office, Bureau of Land Management (BLM), dated March 24, 1980, which held the Hard Times Nos. 1-13 placer mining claims abandoned, and which declared the recordation of the claims pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), to be void.

The claims were located May 12, 1977, and the notices were recorded in the Seward Recording District on May 13, 1977.

Pursuant to the mining claim recording requirements of FLPMA, supra, copies of the recorded location notices were filed with the Alaska State Office July 13, 1977, and were given identification numbers, AA 13361 to 13373. An affidavit of labor for the 1977 assessment year was recorded in the Seward Recording District July 22, 1977, and with BLM September 2, 1977. An affidavit of annual labor for the 1978 assessment year was recorded in the Seward Recording District August 9, 1978, and with BLM January 5, 1979. An affidavit of annual labor for the 1979 assessment year was recorded in the Seward Recording District September 14, 1979, and with BLM November 13, 1979.

Thereafter, by decision of March 24, 1980, BLM deemed the claims to be abandoned because the affidavit of annual labor for the 1978 assessment year had not been filed with BLM on or before December 30, 1978.

Appellant alleges the 1978 affidavit of labor was mailed from Unalaska, Alaska, prior to Christmas Day in 1978, after assurance by postal employees that the envelope would be delivered to BLM, Anchorage, on or before December 30, 1978. Appellant concedes that, as the weather in the Aleutian Islands is unpredictable and uncontrollable, the mail does not always go through. Appellant suggests that the time of mailing, as reflected by the postmark, should be taken into consideration by BLM, as is done by the Internal Revenue Service for tax returns.

Examination of the envelope in which the 1978 affidavit of labor was transmitted discloses some very peculiar, and inexplicable, events. The envelope, bearing a return address of "P.O. 1256, Seward, AK 99664" and addressed to "Bureau of Land Management, Alaska State Office, 555 Cordova St., Pouch 7-512, Anchorage, AK 99510," had the requisite postage affixed. The assorted postmarks on the envelope indicate that it traveled far and wide before finally reaching its proper destination. There is no postmark for Seward or Unalaska. The earliest postmark is that of "Fresno, CA, December 27, 1978"; followed by "Philadelphia, PA, December 29, 1978"; and finally "Reading, PA, December 30, 1978." Delivery of the envelope to the BLM office in Anchorage finally was achieved January 5, 1979.

[1] The statute, section 314, FLPMA, supra, provides:

Sec. 314 (a) * * * The owner of an unpatented lode or placer mining claim located after the date of this Act shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1), relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

* * * * *

(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner * * *.

The implementing regulation, 43 CFR 3833.2-1(b)(1), in effect from January 27, 1977, until March 16, 1979, provided:

§ 3833.2-1 When filing required.

* * * * *

(b)(1) The owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Additionally, the regulations provide that filing of instruments relating to unpatented mining claims means having the instrument received in and date stamped by the proper BLM office.

Finally the regulation, 43 CFR 3833.4, provides that failure to file any instruments required by sections 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, and it shall be void.

While we are not unsympathetic with the plight of this appellant, which arose through no fault of his own--one really does not expect mail addressed to Anchorage, Alaska, to be routed through Fresno,

California, Philadelphia, Pennsylvania, and Reading, Pennsylvania, before being delivered as addressed--the Department has consistently held that one who entrusts to the Postal Service instruments for delivery to a BLM office, is employing the Postal Service as his agent, and consequently must suffer the penalty for late delivery of the mailed items. See Mobil Oil Corp. 35 IBLA 265 (1978); Vern H. Bolinder, 30 IBLA 26 (1977); A. E. White, 28 IBLA 91 (1976). As the Court said in Leahy v. United States, 10 F.2d 617 (D. Mont. 1926):

Contrary to plaintiff's contention, mere mailing of notice does not suffice. If not by the Bureau received, mailing goes for nothing, is not performance of the condition. Otherwise would defeat the object of the law, would open wide Pandora's box the law is intended to firmly close. That by mailing the notice is intrusted to a coordinate department of the government which conducts the Bureau is immaterial. For the nonce the postal authorities are agents of the insured, and his are the consequences of any their failure of duty, even as in any like case of resort to the post in performance of conditions.

10 F.2d at 618.

Appellant's argument that the time of mailing of the envelope containing his proof of labor should prevail, cannot be accepted. The regulation clearly states that filing means being received and date stamped in the proper BLM office.

This decision is not prejudicial to the right of appellant to relocate his claims, assuming the land is open to operations of the mining laws, and subject to any valid rights of third parties.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

